IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.10.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.710 of 2006 and

1.Sri Jayaram Education Trust
rep. by J.Sekar
Managing Trustee, Cuddalore.

2.J.Sekar

3.S.Chithra .. Petitioners

vs.

1.A.G.Syed Mohideen
Trustee, Sri Jayaram Education Trust.

2.A.Haseena Begum
3.G.Jayabalan
4.S.Jagan
5.Canara Bank
rep. by Branch Manager
Thirupapuliyur, Cuddalore.2.

6.State Bank of Travancore
rep. by its Branch Manager
Thirupapuliyur
Cuddalore.2.

.. Respondents

Revision Petition filed under Article 227 of the Constitution of India against the order dated 4.4.2006, passed in I.A.No.20/2006 in unnumbered Original Suit of 2006, on the file of the Principal District Judge, Cuddalore.

WEB COPY

For Petitioners : Mr.S.V.Jayaraman,
Senior Counsel, for
Mr.V.Subramanian.

For Respondents : Mr.R.Subramanian,
for M/s.Hema Sampath, for R1.
Mr.V.Sanjeevi, for R4.

https://hcservices.ecourts.gov.in/hcservices/

ORDER:

This Revision Petition has been filed under Article 227 of the Constitution of India by respondents 1 to 3/defendants 1 to 3 against the order dated 4.4.2006, passed in I.A.No.20/2006 in unnumbered Original Suit of 2006, on the file of the Principal District Judge, Cuddalore. I.A.No.20/2006 was filed by respondents 1 and 2/plaintiffs herein under Sec.92 of C.P.C. praying to give leave to them to institute the suit under Sec.92 of C.P.C. This application was seriously opposed to by the revision petitioners herein by filing a counter.

2. The trial court by order dated 4.4.2006 allowed I.A.No.20/2006 by granting leave and aggrieved by the same the above Civil Revision Petition has been filed by the revision petitioners.

3. Heard the learned Senior Counsel for the revision petitioners and the learned counsel for the respondents 1 and 4. I have also perused the documents and the judgments referred to by them.

4. Before going into the merits of the case, I am of the opinion that the C.R.P. is to be dismissed as not maintainable.

5. An order passed under Sec.92 C.P.C. granting leave is neither a judicial nor a quasi-judicial function of a court. In fact it is purely an administrative function. If that being so, no revision under Sec.115 C.P.C. nor a revision under Article 227 of the Constitution of India is maintainable against an order granting leave to institute the suit.

6. In 1996-2 L.W. 364 (R.Kannan Adityan and four others v. B.S.Adityan and six others) a Division Bench of this court held that a proceeding under Sec.92, C.P.C. is administrative in character and an order granting leave does not affect the rights of any party.

7. In 1998-1-M.L.J.303 (Tirupattur Nagarathu Vysiyargal Sangam v. Tirupattur Periyakulam Nandavanam Inam Land Tenants Association), this court held that the leave granted even without hearing the proposed applicant is not juistifiable under Sec.115 C.P.C.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. In 1995-1-L.W.518 (Raju Pillai and 4 others v. V.P.Paramasivam and 7 others), this court held that a revision under Sec.115 of C.P.C. or a revision under Article 227 of the Constitution of India is not maintainable against an order granting leave to institute the suit.

9. In 1998-2-L.W. 773 Govindarajulu, G.R. and Sons, etc. V. R.Sethurao & 12 others), this court reiterated the same proposition that a revision under Article 227 of the Constitution of India is not maintainable against an order granting leave to institute the suit. Therefore I will have to necessarily hold that this revision under Article 227 of the Constitution of India against the order granting leave is not at all maintainable.

10. Now it is informed by the learned counsel on either side that pursuant to the order passed in I.A.No.20/2006, the suit was numbered as O.S.No.13/2006 and the same is pending. Therefore it is open to the revision petitioners to approach the trial court to take out appropriate application in accordance with law in O.S.No.13/2006, if they are aggrieved by the order passed in I.A.No.20/2006.

11. Hence the C.R.P. is dismissed as not maintainable. No costs. C.M.P.No.6845 of 2006 is closed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Principal District Judge, Cuddalore.

+ one cc to M/s. Hemasampath, Advocate sr no. 47602

km(co)
nm(09.11.2006)

C.R.P.(PD)710/06.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/